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## ENROLLED BILL ANALYSIS

**BILL NUMBERS:** SB271 (H-1), SB272 (H-3), SB273, SB274 (S-1), and SB276 (H-1)

**TOPIC:** Administrative Rules Amendments

**SPONSOR:** SB271 Senator Jack Brandenburg  
SB272 Senator Mike Kowall  
SB273 Senator Dave Robertson  
SB274 Senator John Pappageorge  
SB276 Senator Dave Robertson

**COMMITTEE(S):** Senate Committee on Economic Development  
House Committee on Regulatory Reform

### ADMINISTRATION POSITION

The Department supports this bill package.

### PROBLEM/BACKGROUND

In keeping with the provisions of the Executive Order 2011-5, many observers believe that excessive regulations hamper the growth and development of small businesses and prevent new businesses from locating in Michigan. As provided in their enabling statutes, state agencies have the authority to promulgate rules to implement and run the programs they are required to oversee. EO 2011-5 calls upon the department, through the Office of Regulatory Reinvention (ORR) to engage stakeholders and regulators in a thoughtful and deliberative process through Advisory Rules Committees (ARC) that would assist ORR in making recommendations to the governor on how to create a regulatory process and environment that is conducive to economic growth by reviewing current and proposed rules and regulations.

### DESCRIPTION OF BILLS

**SB271(H-1):** Amends Section 45 of the APA to require ORR to include a small business impact statement with its notice of transmittal to the Legislature's Joint Committee on Administrative Rules (JCAR) regarding a proposed rule. It also requires a regulatory impact statement to include (1) if requested by the ORR or JCAR a comparison of a proposed rule to standards in other similar situated states based on geographic location, topography, natural resources and economic development, (2) the methodology utilized in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule, and (3) a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule on small businesses. The bill will also require an agency to post a regulatory impact statement on its website at least 10 days prior to a public hearing on a proposed rule.

**SB272 (H-3):** Amends Section 40 of the APA to require agencies to consider exempting small businesses from a rule or reduce the impact on them by (1) identifying and estimating the number of small businesses affected by the proposed rule and its probable effect on small businesses; (2) establish different compliance or reporting requirements for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs; (3) consolidate, simplify, or eliminate the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements; and (4) establish performance standards to replace design or operational standards. Also within Section 40 the bill states that the classifications of small businesses contained in the Act must, rather than may, be used when an agency is attempting to reduce the disproportionate economic impact on small businesses.

SB272 (H-3) also amends Section 64 of the APA by allowing a court to award up to 10 times the cost of any permit fees and actual and reasonable costs for witness and attorney fees if the court determined a rule processing violation has occurred.

**SB273:** Amends Section 2 of the APA to exclude a member of the Legislature from being considered a party to a contested case or any other administrative proceeding for acts committed while performing their duty as a legislator.

**SB274 (S-1):** Amends Section 35 of the APA by allowing JCAR to hold a hearing on any rule previously filed with the Secretary of State or on any matter it deems appropriate.

SB274 (S-1) also amends Section 45a to require an agency to withdraw any rule pending before JCAR at the final adjournment of a two-year regular session and to resubmit that rule. Additionally, under Section 45a the definition of “session day” is amended by adding the requirement that a quorum must be recorded.

**SB276 (H-1):** Adds Section 45b which requires ORR to post certain information pertaining to proposed rules on the ORR website within two business days after the transmittal date.

SB276 (H-1) also amends Section 122 by removing the requirement that both actions must be met to either of the action must be met in the definition of “prevailing party” .

## **SUMMARY OF ARGUMENTS**

### ***Pro***

Some may argue this legislation is necessary to protect against over regulation which can hamper the growth and development of small businesses and prevent new businesses from locating in Michigan.

### ***Con***

Some may argue there are provisions within this legislation that may be burdensome to ORR and other state departments.

## **FISCAL/ECONOMIC IMPACT**

SB271 (S-1), SB272 (H-3) and SB276 (H-1) would increase the administrative expenses of LARA and other state departments by an indeterminate amount. SB273 and SB274 (S-1) would have little if any fiscal impact on LARA or other state departments. The bills would have no fiscal impact on local government.

## **ANY OTHER PERTINENT INFORMATION**

The Michigan Manufacturers Association, Michigan Chamber of Commerce, and NFIB all testified in support of the bill package. The Sierra Club Michigan Chapter did testify in opposition to SB272 as introduced due to the “no stricter than federal law” language in Section 32. SB272 (H-3) was amended removing Section 32 all together.

## **ADMINISTRATIVE RULES IMPACT**

This bill package will revise the provisions that govern the promulgation of Administrative Rules.